IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHOICE LANDS, LLC, A WEST VIRGINIA LIMITED LIABILITY COMPANY,

APPELLANT/PLAINTIFF BELOW,

V. CASE NO.: 33878

NONDUS TASSEN, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF BILLY L. TASSEN, AND KENNETH JONES AND JOYCE JONES,

APPELLEES/DEFENDANTS BELOW,

NONDUS TASSEN, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF BILLY L. TASSEN,

APPELLEES/THIRD PARTY PLAINTIFF BELOW,

V.

OLD COLONY COMPANY AND BETTY P. SARGENT,

APPELLEES/THIRD PARTY DEFENDANTS BELOW.

REPLY BRIEF OF APPELLANT CHOICE LANDS, LLC

RICHARD J. BOLEN - WV STATE BAR ID NO. 392
HUDDLESTON BOLEN LLP
611 THIRD AVENUE
P.O. BOX 2185
HUNTINGTON, WV 25722-2185
PHONE: (304) 529-6181
FACSIMILE: (304) 522-4312

COUNSEL FOR APPELLANT
CHOICE LANDS, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY BRIEF OF APPELLANT CHOICE LANDS, LLC

I. INTRODUCTION

On this appeal, Appellant, Choice Lands, LLC, a West Virginia limited liability company ("Choice Lands"), asks this Court to reverse the judgment on the pleadings entered by the Circuit Court of Cabell County in favor of Kenneth Jones and Joyce Jones (collectively, the "Joneses").

As set forth in the previously filed Brief of Appellants, this action involves a dispute over an existing gravel driveway (referred to herein as the "gravel driveway") that crosses property that was purchased by Choice Lands. In the underlying action, Choice Lands is seeking, among other things, to have the circuit court declare that the easement claimed by the Joneses was not specifically located by the deed that purportedly created it and, in any event, that the Joneses, as they now admit, have never had a written easement over any portion of Lot 13, which is the lot across which the gravel driveway connects to Bonnie Boulevard. Under no viable theory do the Joneses have a right to use the Lot 13 portion of the gravel driveway.

The essential question presented on this appeal is whether the circuit court properly concluded that the Joneses have a right to continue to use the gravel driveway, including Lot 13, as a matter of law. Choice Lands respectfully submits that the answer is clearly no- the circuit court's order is in error, the

order should be reversed, and this matter should be remanded to the circuit court for further proceedings.

The Joneses asserted and the circuit court agreed (purportedly based solely on the pleadings) that the Joneses do have the legal right to continue to use the gravel driveway. The circuit court erroneously concluded that the gravel driveway, including Lot 13 over which it passes, is part of an express easement in the Joneses' chain of title.[1] However, in the Brief of Appellees Kenneth and Joyce Jones, the Joneses now concede for the first time that Lot 13 is ***not*** part of their deeded easement.[2]

In addition to the fact that the circuit court erroneously concluded that the gravel driveway was part of an express written easement, the circuit court concluded, in the alternative, that the continued use of Lot 13 for 27 years

---

[1] In granting judgment in favor of the Joneses, Judge Pancake found:

> "That the pleadings filed in this matter clearly showed that the easement in question had existed in defendants Kenneth and Joyce Jones chain of title of record in the Cabell County Clerk's Office since November 16th, 1973, and that defendants Kenneth and Joyce Jones have owned their property, with the easement in question contained in their chain of title, since June 12th, 1978."

See July 20, 2006 order (hereinafter referred to as the "2006 Order") at Findings of Fact ¶ 3. *See also* May 14, 2007 order (hereinafter referred to as the "2007 Order") at Findings of Fact ¶ 2.

[2] *See* Brief of Appellees Kenneth and Joyce Jones at p. 10 ("Appellees' [sic] on page 21 further continues in their argument concerning the fact that Lot 13 was not mentioned in the appellees' Jones easement. ***Appellees' Jones concede that fact***, since the chain of title containing the language of that

established the Joneses' legal right to use Lot 13.[3] However, the circuit court also concluded that the presumed (and as yet unproven) continuous use of Lot 13 was permissive.[4] The notion that a written easement can be expanded by permissive use of areas outside the written easement so as to bind the party who has given such permission and subsequent purchasers is contrary to the most basic tenets of property law.

Since the Joneses now concede that the express easement upon which they rely does not include the Lot 13 portion of the gravel driveway, and since the circuit court's alternative ruling that the Joneses are entitled to a prescriptive easement is fatally flawed as a matter of law, the circuit court's order must be reversed.

II. POINTS AND AUTHORITIES RELIED UPON AND DISCUSSION OF LAW

A. THE CIRCUIT COURT MISAPPLIED THE VERY RESTRICTIVE STANDARD FOR GRANTING A MOTION FOR JUDGMENT ON THE PLEADINGS.

---

easement is clearly set forth therein and is part of the pleadings in this matter.") (emphasis added).

[3] *See* 2007 Order at Conclusions of Law ¶ 4:

> "Lot 13 was owned by the Tassens, who did not object to the Joneses' motion for judgment on the pleadings and who stated that the easement was specific. The Tassens had always allowed the Joneses to cross lot 13, at least prior to Mr. Tassen's termination of any such permissive use, thus establishing it as a part of the easement due to its 27 years of continuous use."

[4] *See* Id.

In their brief, the Joneses state that they "absolutely concur" with Choice Lands' recitation of the standard for granting judgment on the pleadings under Rule 12(c).[5] However, throughout their brief, the Joneses misstate certain aspects of that standard and ignore other important aspects of that standard.

First, when the defendant is the moving party for judgment on the pleadings, the court must "read a pleading liberally and accept as true the well-pleaded allegations of the ***complaint*** and the inferences that reasonably may be drawn from the allegations." Kopelman & Associates, L.C., v. Collins, 473 S.E.2d 910, 914 (W. Va. 1996) (emphasis added). The Joneses make repeated reference to the circuit court's consideration of the "parties'" (plural) pleadings and the conclusions drawn therefrom, implying that the circuit court was entitled to presume as true the matters alleged in the responsive pleadings of the Joneses and other parties instead of just the allegations made in Choice Lands' *complaint*.

For example, Choice Lands argued in its brief that the circuit court *presumed* that the gravel driveway had been used continuously by the Joneses for over 27 years.[6] However, there is no evidence (i.e. verified pleadings or sworn testimony) to

[5] *See* Brief of Appellees Kenneth and Joyce Jones at pp. 5-6.

[6] *See* Brief of Appellants at p. 16.

establish this presumed fact, as Choice Lands correctly pointed out. The Joneses argue that their own pleadings and the Tassens' pleadings show that it is true.[7] The Joneses' assertion that matters in their own pleadings are permitted to be presumed as true in the consideration of their motion for judgment on the pleadings is contrary to the well-established standard under Rule 12(c).

Second, in regard to Choice Lands' submission of the affidavit of Bruce Johnson[8], the Joneses argue that it was "properly ignored" by the circuit court. Specifically, the Joneses assert that "…appellant's attempt to introduce an affidavit of its managing partner in regards to its response to the motion was outside the pleadings which the circuit court properly ignored, since once again this is a matter to be considered upon the pleadings and exhibits alone assuming that they are true."[9]

---

[7] *See* Brief of Appellees Kenneth and Joyce Jones at p. 9 ("Appellant's next try to contend that the appellees' Jones continued use of the easement may or may not be true. The pleadings show that it is true, and the only evidence indicates that was true, and appellant has no argument that it was not true, since it is contained in the deeds in the chain of title in question. The parties to that chain of title are appellees' Jones and Tassens, and they both confirmed that the easement has been unaltered for the past 27 years.").

[8] The Affidavit of Bruce Johnson is part of the record below and was attached to *Plaintiff's Motion for Reconsideration of Order Granting Jones Defendants' Motion for Judgment on the Pleadings or, in the Alternative, Motion for Relief from that Order*. A copy of the Affidavit of Bruce Johnson was also attached as "Exhibit B" to the Brief of Appellants in this appeal.

[9] *See* Brief of Appellees Kenneth and Joyce Jones at p. 8.

This assertion flies in the face of Rule 12(c), which expressly allows for consideration of "matters outside the pleadings." As set forth in Choice Lands' previously filed brief (which the Joneses "absolutely concurred" with in regard to the standard under Rule 12(c)), Choice Lands pointed out that Rule 12(c) provides that:

> "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. ***If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56***." (emphasis added).

The Joneses' assertion that Choice Lands' submission of an affidavit in response to the motion for judgment on the pleadings was improper is plainly wrong and contrary to Rule 12(c). Frankly, it is immaterial whether the Joneses' motion should have been considered under Rule 12(c) or Rule 56 because the circuit court's decision to grant the motion and dismiss the claims of Choice Lands against the Joneses was in error under either standard.

Third and finally, the Joneses ignore one of the most important aspects of the Rule 12(c) standard. Not only must the circuit court assume as true all well-pled facts in the complaint; the circuit court must also determine that any

perceived deficiency in the complaint could not be cured by amendment of the complaint. *See* Copley v. Mingo County Board of Education, Syllabus Point 2, 466 S.E.2d 139 (W. Va. 1995) (a Rule 12(c) "motion will not be granted except when it is apparent that the deficiency could not be cured by an amendment."). While Choice Lands submits that its complaint in its present state is more than sufficient to state a claim against the Joneses, any perceived deficiency therein could clearly be cured by amendment for the reasons set forth herein and in Choice Lands' previously filed brief. Accordingly, the circuit court misapplied the very restrictive standard for considering the Joneses' motion for judgment on the pleadings and improperly granted the same.

B. THE CIRCUIT COURT ERRED IN FINDING THAT THE PERMISSIVE USE OF LOT 13 CREATED A PRESCRIPTIVE EASEMENT.

Since the Joneses have now admitted that their easement does not encompass the Lot 13 portion of the gravel driveway, they have no entitlement to the continued use of the gravel driveway unless a prescriptive easement has been established. In the 2007 Order, Judge Pancake erroneously concluded that the presumed continuous use of the gravel driveway for 27 years established an easement:

> "Lot 13 was owned by the Tassens, who did not object to the Joneses motion for judgment on the pleadings and who stated that the easement was specific. The Tassens had always allowed the Joneses to cross lot

13, at least prior to Mr. Tassen's termination of any such permissive use, thus establishing it as a part of the easement due to its 27 years of continuous use."[10]

The notion that a written easement can be expanded by permissive use of areas outside the written easement so as to bind subsequent purchasers is contrary to the most basic tenets of property law. Written express easements of record are intended to put purchasers on notice of the scope of the easement. *The written easement upon which the Joneses rely plainly does not include Lot 13*. During the period that they owned the property, the Tassens could certainly grant, and apparently did grant, their express permission for the Joneses to use the Lot 13 portion of the gravel driveway, but that express permission simply cannot change or expand the written easement. *See* Grist Lumber, Inc. v. Brown, Syllabus Point 5, 550 S.E.2d 66 (W. Va. 2001); Carr et al. v. Constable, Syllabus Point 4, 470 S.E.2d 408 (W. Va. 1996); Jamison, et al. v. The Waldeck United Methodist Church, et al., Syllabus Point 3, 445 S.E.2d 229 (W. Va. 1994).

C. THE JONESES' BRIEF CONTAINS NUMEROUS ERRORS OF FACT AND LAW.

The following errors of fact and law are discussed in the order in which they appear in the Joneses' brief:

[10] *See* 2007 Order at Conclusions of Law ¶ 4.

(1) On page 2 of their brief, the Joneses contend that "appellant then drug its feet in allowing the entry of the order." This is absolutely untrue. We will not attempt to reconstruct all the facts, but there was no foot-dragging by Choice Lands with respect to the entry of the order.[11] In fact, to the contrary, Choice Lands did everything it could to get the order entered.

(2) On page 6 of their brief, the Joneses state, "The only fact in this case disputed was the appellants' contention that the appellee Kenneth Jones made no objection to an oral conversation between appellant's managing partner and appellee Tassen in regards to moving the easement in question." It may be that the Joneses intended to dispute Choice Lands' contention that Mr. Jones failed to object to Mr. Tassen's termination of permission for the Joneses to use the gravel driveway that crosses Lot 13, but, in fact, the Joneses never did dispute that fact. An affidavit was filed by Choice Lands stating exactly what happened on the day that Mr. Tassen went to Mr. Jones and told him that permission was being withdrawn and setting forth the fact that Mr. Jones made no objection and no statement whatsoever in response. The Joneses and their counsel should be

---

[11] The relevant procedural history from the circuit court proceedings is set forth in Choice Lands, LLC's Response to Jones Appellees' Motion to Dismiss Appeal and Motion for Suspension of Rules Regarding Appellees' Deadline to File Brief.

well aware that the rules provide a method for disputing facts which are introduced into the record by affidavit. That method is a counter-affidavit, and none was filed. No depositions were taken and no other sworn statements were ever submitted. To this day, we have no idea what Mr. Jones does or does not remember about Mr. Tassen's withdrawal of permission to use the existing driveway over Lot 13. The one thing we do know is that the version set forth in the affidavit filed by Choice Lands has never been "disputed" as provided for in the rules.

(3) The Joneses' core argument, as summarized by them, is found at the bottom of page 8 of their brief:

> "The easement in question was contained in the parties chain of title as was provided by the appellant in their pleadings and exhibits filed in this matter. The appellant's own surveyor sets forth the location of that easement on its survey map, which was filed with the original pleadings, and as shown on its subsequent survey attached to its brief. Appellant's own evidence attached to its pleadings shows the location of that easement, and how stupid can you be to state that the circuit court was wrong in making that finding when it was readily apparent not only from their own survey but also from inspecting the property. Appellees' counsel will not attempt to respond to this ludicrous argument any further."[12]

Laying aside the gratuitous and inappropriate mudslinging, what is readily apparent from this statement is that the Joneses just don't understand that a gravel driveway is not an easement. An easement is a legal right of use, and a gravel driveway is a

[12] *See* Brief of Appellees Kenneth and Joyce Jones at p. 8.

roadway on the ground. More specifically, the Joneses refuse to understand that the nonspecific and contingent easement granted to their predecessor in title twenty-seven (27) years ago, which, in effect, gave them the right to use any roadway that might be created across Lots 10, and/or 11, and/or 12, and/or 14 to the rear of their property gives them no right to use the existing gravel driveway which crosses Lot 13, as to which the Joneses clearly do not have an easement.

Contrary to the oft-stated argument of the Joneses, the surveyor did not "set forth the location of that easement on its survey map." The surveyor set forth the location of the existing gravel driveway; and, no, the "appellants' own evidence attached to its pleadings" does not "show the location of that easement." It shows the location of the existing gravel driveway. These are two very different things.

The Tassens, in effect, told the Joneses' predecessor in title that if and when a roadway to the back of their property was ever created, either from Bonnie Boulevard or Norway Avenue, across certain lots only, i.e., Lots 10, 11, 12, and/or 14, then the Joneses would have the right to use such roadway. But the existing gravel driveway doesn't do that. It doesn't provide access to the rear of the Joneses' property from Lots 10, 11, 12, or 14. It provides access to the back of the Joneses' property across Lot 13. It is understandable why the Joneses

keep wanting to confuse this issue by claiming that the existing gravel driveway across Lot 13 is, in fact, subject to the easement their predecessor in title was granted many years ago. Nevertheless, wishing simply doesn't make it so.

(4) On page 9 of their brief, the Joneses state that "The parties to that chain of title are appellees Jones and Tassen, and they both confirmed that the easement had been unaltered for the past 27 years." No, in fact, they didn't. Neither the Joneses nor the Tassens have filed any affidavits or made any other sworn statements confirming that the easement was unaltered for the past 27 years, but, in any event, that was not the point made by Choice Lands. Choice Lands made the point that the Joneses may not have continuously[13] used the existing gravel driveway for 27 years. As to that, the Joneses have never spoken. The gravel driveway leads to the rear of their property. Their property also fronts on a public street, and there is parking in front of their house on the public street. The Joneses very well may have used the gravel driveway only infrequently.

(5) The Joneses' contention on page 9 of their brief that "the fact that the appellant now owns the property [Lot 13] is of no consequence." Wrong again. The circuit court had made

[13] Of course, "continuous" use in a literal sense for 27 years is virtually impossible. There may have been frequent use, but not continuous.

the point that the Tassens have made no objection to judgment being entered in favor of the Joneses to allow them to use the existing driveway over Lot 13. Choice Lands pointed out that the Tassens didn't object because they have no dog in this fight. They no longer own the portion of Lot 13 at issue. The owner of the portion of Lot 13 at issue, Choice Lands, does object. That was the point we were making, and it is a valid point.

(6) At the bottom of page 9 of their brief, the Joneses entirely mischaracterize the argument made on page 19 of Choice Lands' brief. Choice Lands did not argue that the Court erred in finding that the easement in question exists in the appellee Joneses' chain of title. Of course, the contingent and nonspecific easement granted to the Joneses' predecessor in title does exist in their chain of title. Choice Lands has never denied that. What Choice Lands contended was entirely different, i.e., that the circuit court erred in finding that the gravel driveway is subject to the easement found in the Joneses' chain of title - it is not. It is not, because it crosses Lot 13, and the easement in the Joneses' chain of title does not give them the right to use any driveway crossing Lot 13.

(7) On page 10 of their brief, the Joneses, recognizing that they have no right to cross Lot 13, propose that the Court

should order the creation of a new roadway over Lot 14 as to which they would have an easement:

> "...if in fact appellant does not want the appellees' Jones to cross Lot 13, then appellees Jones have the right to cross Lot 14 which is within the specific language of their easement. Appellees Jones have no objection of this court modifying the circuit court's order to so find that appellees' Jones easement should be moved to Lot 14 as contained in their chain of title...."[14]

There are two obvious problems with this argument: (1) the Joneses' predecessor in interest was not granted an easement by Choice Lands, and Choice Lands has no obligation to create a driveway for them over Lots 10, 11, 12, or 14,[15] and (2) the Joneses, in fact, weren't granted an absolute right of access by anyone at all and, therefore, have no right to demand that one be provided to them. Again, all they were ever granted was the right to use a roadway over certain lots if and when such a roadway was ever created. That does not give them the right to demand that the Court enter an order that such a roadway be created for them.

(8) Contrary to the argument made by the Joneses on page 10 of their brief, Choice Lands is not "attempting to quash and

---

[14] *See* Brief of Appellees Kenneth and Joyce Jones at p. 10.

[15] Mrs. Tassen, of course, is very much alive and well. She and her husband granted the contingent, nonspecific easement to the Joneses' predecessor in title and, of course, if anyone is going to be required to provide the Joneses with a driveway consistent with their easement over Lots 10, 11, 12, and/or 14, then Mrs. Tassen is the person who should do that, and she is in a position to do that.

extinguish the appellees' Jones easement contained in their chain of title and existed for the past 27 years."[16] Choice Lands is simply attempting to terminate the Joneses' unauthorized use of Lot 13 where it is part of Choice Lands' property. As far as Choice Lands is concerned, the Joneses are welcome to pursue whatever rights they think they have against Mrs. Tassen, the grantor of the nonspecific contingent easement, to try to get her to create a driveway to the rear of the Joneses' property which crosses one or more of the lots specified in the original easement.

(9) In the same vein of mudslinging as the argument quoted above from the bottom of page 8 of its brief, the Joneses, at the bottom of page 10 of their brief, state:

> "Lastly, on page 24 of its brief appellant makes an absurd estoppel argument, that in a property transaction not involving appellees' Jones that appellee Kenneth Jones' mere silence concerning a discussion between appellant and appellees' Tassens amounted to an estoppel. How stupid and embarrassing to make an estoppel or detrimental reliance argument in regards to a property transaction. The statute of frauds in West Virginia so provides that any transaction concerning real estate must be writing. W.Va. Code Section 36-1-3."

Although the Joneses argue that it is "stupid and embarrassing to make an estoppel or detrimental reliance argument in regards to a property transaction," because of the statute of frauds,

---

[16] *See* Brief of Appellees Kenneth and Joyce Jones at p. 10.

they are wrong about that. This Court has repeatedly and recently held that the doctrine of equitable estoppel does apply to real property transactions. *See, for example,* Folio v. City of Clarksburg, 655 S.E.2d 143, 148-149 (W. Va. 2007):

> "In Shrewsbury, various landowners brought an action against an adjacent landowner claiming that they had an easement over a road on his land that led to their properties. Plaintiff Roger Sexton argued that he was entitled to an easement by equitable estoppel. The evidence showed that before purchasing his property, Mr. Sexton was going to buy another tract of land. He agreed to give up the first tract of land he had been offered so a church could purchase that property. Mr. Sexton purchased property adjacent to the defendant instead based upon the defendant's representation that he could use the roadway. The defendant had been a trustee of the church that purchased the first tract of land that had been offered to Mr. Sexton. Based upon this evidence, the circuit court concluded that Mr. Sexton had an easement by equitable estoppel. This court affirmed that decision. 183 W.Va. at 295, 395, S.E.2d at 539."

In other words, real property transactions in West Virginia can and sometimes do involve oral representations that can, under the right circumstances, create an equitable estoppel, notwithstanding the statute of frauds.

(10) Not only do the Joneses have the law wrong, they are also, once again, attempting to confuse the facts by stating that:

> "If in fact appellees Jones consented to the movement of that easement or the canceling of that easement then appellant should have obtained a writing to that effect."[17]

[17] *See* Brief of Appellees Kenneth and Joyce Jones at p. 11.

Choice Lands is not now and never has contended that the Joneses have consented or should consent to the movement of their easement or the cancellation of their easement. Mr. Jones did, however, remain silent when he was told he could no longer use the gravel driveway over Lot 13. In legal effect, Mr. Jones acquiesced in Mr. Tassen's withdrawal of permission to use the existing driveway over Lot 13. Of course, Mr. Jones presumably knew he had no legal right to use Lot 13, and there was really nothing Mr. Jones could have said in that situation. The permissive right given to him to use the existing driveway ended when Mr. Tassen withdrew his permission to use it, silence or no silence.

(11) The Joneses' "lawsuit abuse" argument is plainly wrong:

> "As mentioned above appellees' counsel hereby states that this is a classic example of lawsuit abuse. Appellant is obviously a large company with lots of money to spend to cancel an easement with a party in which it had no transaction."[18]

There has been no discovery in this action, but, if there had been, and, if the Joneses had taken any depositions or sought any written discovery, they would have learned that Choice Lands is not in any way, shape, or form a "large company with lots of money to spend." In fact, it is the exact opposite

[18] *See* Brief of Appellees Kenneth and Joyce Jones at p. 12.

- it is a very small "mom and pop" company founded by and owned by Bruce Johnson and his wife, Janet Johnson, and no one else. This is a company in which the owners operate the business and work very hard every day to try to make a decent living. They chose to form a limited liability company to facilitate their transaction of business. Their decision to form an LLC in no way suggests that they have a "large company with lots of money to spend." The Joneses and Choice Lands have been harassed by the unauthorized and improper use of the gravel driveway crossing Lot 13 by the Joneses and the Joneses' sons, and they want to stop that abuse. Choice Lands' lawsuit to stop abuse is in no way "lawsuit abuse."

III. CONCLUSION

Quite possibly, judgment on the pleadings could have been properly entered <u>against</u> the Joneses, since they themselves admit they have no easement as to Lot 13, over which the only existing driveway passes and since <u>permissive</u> use can never ripen into a legal right of use. Be that as it may, for present purposes, it suffices to note that judgment on the pleadings in favor of the Joneses was plainly wrong and must be reversed.

Respectfully submitted,
Choice Lands, LLC

By: Richard Bolen
Of Counsel

Richard J. Bolen - WV State Bar ID No. 392
HUDDLESTON BOLEN LLP
611 Third Avenue
P. O. Box 2185
Huntington, WV 25722-2185
Phone: (304) 529-6181
Facsimile: (304) 522-4312

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHOICE LANDS, LLC, A WEST VIRGINIA LIMITED LIABILITY COMPANY,

APPELLANT/PLAINTIFF BELOW,

V.

CASE NO.: 33878

NONDUS TASSEN, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF BILLY L. TASSEN, AND KENNETH JONES AND JOYCE JONES,

APPELLEES/DEFENDANTS BELOW,

NONDUS TASSEN, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF BILLY L. TASSEN,

APPELLEES/THIRD PARTY PLAINTIFF BELOW,

V.

OLD COLONY COMPANY AND BETTY P. SARGENT,

APPELLEES/THIRD PARTY DEFENDANTS BELOW.

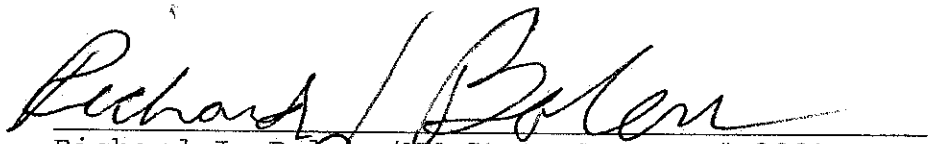
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing "**Reply Brief of Appellant Choice Lands, LLC**" was served upon counsel of record via U.S. Mail, postage prepaid, this 8th day of August, 2008, addressed as follows:

Gail Henderson-Staples, Esq.
Henderson, Henderson
& Staples, L.C.
711½ Fifth Avenue
Huntington, WV 25701
Counsel for Nondus Tassen, individually and as Executrix of the Estate of Billy L. Tassen

R. Lee Booten II
637 7th Street
Huntington WV 25701
Counsel for Kenneth Jones and Joyce Jones

Christopher L. Hamb
Robinson & McElwee PLLC
P. O. Box 1791
Charleston, WV 25326
Counsel for Old Colony Company of Huntington
and Betty P. Sargent



Richard J. Bolen (WV State Bar ID # 392)
Huddleston Bolen LLP
P.O. Box 2185
Huntington, WV 25722
(304) 529-6181
Counsel for Appellant
Choice Lands, LLC